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OFFICE OF PETITIONS

In re Application of
Gordon W. Glazner
Application No. 09/878,918
Filed: June 13, 2001
Attorney Docket Number: 84894-602

ON PETITION

This is a decision on the petition filed October 25, 2005, which is treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

A non-Final Office Action was mailed June 25, 2004. A response was due not later than September 25, 2004. A response in the form of an amendment was filed October 22, 2004 with a one month extension of time request. On November 19, 2004 the applicant was advised that the amendment filed was non-compliant under 37 CFR 1.121. The time for response was one month from the mailing of the November 19, 2004 Notice. No response having been filed, a Notice of Abandonment was mailed September 21, 2005.

Petitioner asserts that the Notice of Non-Compliant Amendment was never received.

The file record discloses that the Notice of Non-Compliant Amendment was mailed to the address of record which is the same address used on all correspondences from the USPTO including the Notice of Abandonment. Petitioner has provided a copy of the patent file and docketing records for this specific application, wherein receipt of the Notice of Non-Compliant Amendment, mailed November 19, 2004, would have been filed, had it been received. Petitioner also documents the procedures used for handling of USPTO correspondence in an effort to show that the Notice mailed November 19, 2004 was not received.

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the Notice of Non-Compliant Amendment mailed November 19, 2004, it is apparent that the Notice of Non-Compliant Amendment was not received. The evidence submitted corroborates non-receipt of the Notice of Non-Compliant Amendment.

In view of the facts set forth in the petition, it is concluded that the Notice of Non-Compliant Amendment was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and the Notice of Abandonment is vacated. No petition fee is due and none has been charged.

The file is being forwarded to Technology Center 1617 for the remailing of the Notice of Non-Compliant Amendment originally mailed on November 19, 2004. Telephone inquiries concerning the remailing of the Notice of Non-Compliant Amendment should be referred to the Technology Center. All other inquiries regarding this decision may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions